

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI

MICHAEL TISIUS,

Petitioner,

vs.

CINDY GRIFFITH,

Respondent.

17-0426-CV-W-FJG-P  
No. \_\_\_\_\_

**MOTION TO APPOINT COUNSEL IN A HABEAS CORPUS  
PETITION ACTION IN A DEATH PENALTY CASE**

COMES NOW, Michael Tisius, *pro se* and informs this Court of the following:

1. I was convicted of first degree murder and sentenced to death in the Circuit Court of Boone County.
2. On April 25, 2017, the Missouri Supreme Court affirmed the denial of my Rule 29.15 post-conviction action.
3. My present state appointed Missouri Public Defender counsel, William J. Swift, has filed a rehearing motion within the time limits provided for under the Missouri Supreme Court's rules.
4. I want to proceed with an application for a writ of habeas corpus. In *McFarland v. Scott*, 512 U.S. 849, 854 (1994) (emphasis added) (footnote omitted), the Court indicated that Section 848(q)(4)(B) "[o]n its face, . . . grants indigent capital defendants *a mandatory right* to qualified legal counsel and related services '[i]n any [federal] postconviction proceeding.'" Under Section 848 (q)(4)(B), a post-conviction

proceeding “is commenced by the filing of a death row defendant’s motion requesting the appointment of counsel for his federal habeas corpus proceeding.” *Id.* at 856-57. Under *McFarland*, this Court is required to appoint counsel to represent me and that counsel is entitled to compensation under federal law.

5. My present state appointed attorney, has been in contact with the newly created Capital Habeas Unit based in the office of the Federal Public Defender for the Western District of Missouri and under the supervision of Federal Public Defender Laine Cardarella. The Capital Habeas Unit is headed by Laurence Komp, who has substantial Federal capital habeas experience. At the present time, Mr. Komp is the only capital habeas attorney in the Capital Habeas Unit. The Capital Habeas Unit is just beginning the process to hire other attorneys and other personnel. The contact information for the Capital Habeas Unit is as follows: Laine Cardarella Federal Public Defender 818 Grand Blvd - Suite 300 Kansas City, MO 64106 phone (816) 471-8282 and e-mail Laine Cardarella [Laine\\_Cardarella@fd.org](mailto:Laine_Cardarella@fd.org).

My present state appointed attorney also has been in contact with Elizabeth Unger Carlyle who has significant federal criminal law experience as well as capital and non-capital federal habeas case experience. Ms. Carlyle’s contact information is as follows: Carlyle Parish L.L.C. 6320 Brookside Plaza #516 Kansas City, MO 64113, phone (816) 525-6540, and e-mail [elizabeth@carlyleparishlaw.com](mailto:elizabeth@carlyleparishlaw.com).

Both the Capital Habeas Unit, Mr. Komp, and Ms. Carlyle are willing to accept an appointment on my federal habeas case. Ms. Carlyle is willing to be compensated under

the noted federal law governing the appointment of counsel in death penalty habeas corpus cases.

6. Although my rehearing motion may not yet be ruled on, this Court should now appoint the Capital Habeas Unit for the Western District of Missouri, Mr. Komp, and Ms. Carlyle. My casefile, like most death penalty cases, is large and will require a substantial expenditure of time to review. My casefile, however, is even larger than most death penalty cases because in addition to a trial guilt phase there has been two penalty phases. In *Snow v. Ault*, 238 F.3d 1033, 1033-36 (8th Cir. 2001), the Eighth Circuit ruled that under the AEDPA the time for filing my habeas corpus petition will commence running when rehearing is ruled on. Mr. Swift expects that the rehearing motion will be ruled on shortly. Mr. Swift has indicated that he will not be filing a petition for certiorari with the United States Supreme Court. For these reasons, this Court should now appoint counsel to represent me in order to allow timely and thorough presentation of my claims to this Court.

WHEREFORE, Michael Tisius *pro se* moves this Court to appoint counsel to represent me on an application for a writ of habeas corpus and to appoint counsel who have expressed a willingness to accept an appointment, the Capital Habeas Unit for the Western District of Missouri, Laurence Komp, and attorney Elizabeth Carlyle and to now make such appointment.

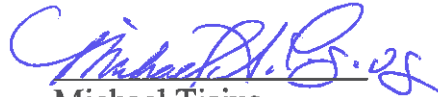
Respectfully submitted,



Michael Tisius  
# 1034496

CERTIFICATE OF SERVICE

I, Michael Tisius, hereby certify that on this 25<sup>th</sup> day of May, 2017, a true and correct copy of the foregoing was mailed postage pre-paid to the Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri 65102.



Michael Tisius  
#1034496

17 MAY 25 AM 9:30

SHORT  
NO